

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

STATE OF MICHIGAN, STATE OF  
CALIFORNIA, DISTRICT OF  
COLUMBIA, STATE OF HAWAII, STATE  
OF MAINE, STATE OF MARYLAND,  
STATE OF NEW MEXICO,  
COMMONWEALTH OF  
PENNSYLVANIA, STATE OF  
WISCONSIN, THE BOARD OF  
EDUCATION FOR THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK,  
BOARD OF EDUCATION FOR THE CITY  
OF CHICAGO, CLEVELAND  
MUNICIPAL SCHOOL DISTRICT  
BOARD OF EDUCATION, and SAN  
FRANCISCO UNIFIED SCHOOL  
DISTRICT,

Plaintiffs,

v.

ELISABETH D. DEVOS, in her official  
capacity as the United States Secretary of  
Education, and U.S. DEPARTMENT OF  
EDUCATION,

Defendants.

Case No. 20-cv-4478-SK

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Judge: Hon. Sallie Kim

Trial Date: None Set

Action Filed: July 7, 2020

1 On July \_\_, 2020, Plaintiffs the State of Michigan, the State of California, the District of  
2 Columbia, the State of Hawaii, the State of Maine, the State of Maryland, the State of New  
3 Mexico, the Commonwealth of Pennsylvania, the State of Wisconsin, the Board of Education of  
4 the City School District of the City of New York, Board of Education for the City of Chicago,  
5 Cleveland Municipal School District Board of Education, and San Francisco Unified School  
6 District (Plaintiffs) filed a Motion for Preliminary Injunction (Motion), and a hearing on that  
7 Motion was held.

8        The Court has considered the Motion and documents filed therewith, all of the papers on  
9 file in this action, and the evidence and arguments presented at the hearing, and hereby GRANTS  
10 Plaintiffs' Motion. The Court finds that each of the necessary elements for issuing a preliminary  
11 injunction are met. In particular, the Court finds that Plaintiffs are likely to prevail on the merits  
12 of their claims; absent a preliminary injunction, Plaintiffs would be likely to suffer irreparable  
13 injuries; the balance of the equities favor Plaintiffs; and the requested relief is in the public  
14 interest.

## PRELIMINARY INJUNCTION

16 Now, therefore, it is hereby ORDERED that:

17           Defendant Elisabeth D. DeVos, in her official capacity as Secretary of the United States  
18           Department of Education, and the United States Department of Education (Defendants), and  
19           Defendants' officers, agents, servants, employees, and attorneys, and any other persons who are  
20           in active concert or participation with them, ARE HEREBY RESTRAINED AND ENJOINED  
21           from committing, or performing directly and indirectly, any and all of the following acts during  
22           the pendency of this action with respect to any Plaintiff, any entity operated by any Plaintiff, any  
23           entity established by the laws of any Plaintiff, or any local or state educational entity located  
24           within the geographical boundaries of any Plaintiff (Covered Entities):

25 1. Imposing or enforcing any requirement to calculate the proportional share of funds for  
26 equitable services required under Section 18005 of the Coronavirus Aid, Relief, and  
27 Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281, in a manner

1 not explicitly described by Section 1117(a)(4)(A) of the Elementary and Secondary  
2 Education Act of 1965 (ESEA);

3 2. Imposing or enforcing any limitation on the use of the Governor's Emergency Education  
4 Relief (GEER) Funds or Elementary and Secondary Schools Emergency Relief (ESSER)  
5 Funds on the basis that a school or other recipient does not participate under Title I, Part A  
6 of the ESEA;

7 3. Imposing or enforcing any requirement that GEER Funds or ESSER Funds supplement,  
8 not supplant, existing funds or expenditures, including, but not limited to, the requirement  
9 described in Section 1118(b) of the ESEA;

10 4. Imposing or enforcing on any Covered Entity any requirement, guidance, or  
11 recommendation to provide equitable services under Section 18005 of the CARES Act  
12 with methods and procedures not explicitly described by Section 1117 of the ESEA,  
13 including, but not limited to, the provisions of the Department of Education guidance  
14 document titled *Providing Equitable Services to Students and Teachers in Non-public*  
15 *Schools Under the CARES Act Programs* (April 30, 2020) (Guidance), attached to the  
16 Complaint as Exhibit A, or *Providing Equitable Services to Students and Teachers in*  
17 *Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (Rule), or any other substantially  
18 equivalent requirements;

19 5. Penalizing any Covered Entity, including by withholding, terminating, or taking any  
20 action to recover funds provided by the CARES Act or a program established by the  
21 ESEA, on the basis of any alleged failure to comply with (1) the Guidance, attached to the  
22 Complaint as Exhibit A; (2) the Rule; or (3) any other substantially equivalent  
23 requirements to provide equitable services under Section 18005 of the CARES Act with  
24 methods and procedures not explicitly described by Section 1117 of the ESEA; and

25 6. Conducting any investigation of, or regulatory proceeding regarding, any Covered Entity  
26 on the basis of any alleged failure to comply with the Guidance or the Rule, or any alleged  
27 failure to provide equitable services under Section 18005 of the CARES Act with methods  
28 and procedures not wholly described by Section 1117 of the ESEA.

1        This preliminary injunction does not relieve any Covered Entity of its obligation to  
2 provide equitable services under Section 18005 of the CARES Act with methods and procedures  
3 explicitly described by Section 1117 of the ESEA.

4  
5  
6 **IT IS SO ORDERED.**

7  
8 Dated: \_\_\_\_\_